

C. BERT SANGER TRUST

IBLA 85-476

Decided May 26, 1987

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void and rejecting affidavits of assessment work for recordation.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void and reject the recordation of affidavits of assessment work where the owner of the claim failed to file a copy of the notice of location for the claim timely with BLM, pursuant to sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982).

APPEARANCES: C. Bert Sanger, trustee, C. Bert Sanger Trust, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The C. Bert Sanger Trust has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated February 11, 1985, declaring the Trust Seven through Trust Ten and the Sand Hill mining claims abandoned and void and rejecting affidavits of assessment work for recordation.

On March 28 and August 19, 1981, appellant and Roger L. Johnson located the Trust One through Trust Six lode mining claims and tunnel site in Okanogan County, Washington. The claims and tunnel site were recorded with BLM on April 13 and September 16, 1981, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). ^{1/} Affidavits of assessment work with respect to the claims were filed with BLM on October 12, 1982, November 28, 1983, and December 13, 1984, pursuant

^{1/} The record indicates that the Trust Two tunnel site was originally described as a lode mining claim. In addition, an amended location notice was recorded with BLM on Aug. 31, 1981, describing a point of discovery and the fact that the claim was "coincident" with the Trust One lode mining claim. See Elsworth and Dolores Loveland, 89 IBLA 205 (1985).

to section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). The 1983 and 1984 affidavits of assessment work, however, refer to five additional claims, listed as the Trust Seven through Trust Ten and the Sand Hill claims. The affidavits give the "OR MC" serial numbers of the additional claims as OR MC 692793 through OR MC 692796 and OR MC 693891. A map attached to each affidavit indicates that these claims are contiguous to the Trust One through Trust Six claims.

In its February 1985 decision, BLM rejected the 1983 and 1984 affidavits of assessment work for recordation with respect to the Trust Seven through Trust Ten and Sand Hill claims, "because the serial numbers that you provided with the documents are not our BLM 'OR MC' serial numbers." BLM also declared the claims abandoned and void because BLM records "show the claims have not been recorded with our office under the requirements of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) and section 43 CFR 3833.1-2 of Title 43, Code of Federal Regulations."

In its statement of reasons for appeal, appellant contends that the claims involved herein were properly recorded, stating that the 1984 affidavit of assessment work indicates the "OR MC" numbers "you need." Appellant states it is "enclosing copies of the original recordings of the claims."

[1] Section 314(b) of FLPMA, requires the owner of an unpatented mining claim to file a copy of the notice of location of the claim with BLM "within the three-year period following October 21, 1976," if the claim was located prior to October 21, 1976, or "within ninety days after the date of location of such claim," if the claim was located after October 21, 1976. See 43 CFR 3833.1-2(a) (1981). Failure to file the required document timely is deemed to constitute an abandonment of the mining claim, by virtue of section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982). The claim is thereby rendered void. 43 CFR 3833.4(a). The Supreme Court upheld the validity of the recording requirements of FLPMA in United States v. Locke, 105 S. Ct. 1785 (1985).

In the present case, the record does not reveal, and appellant has not indicated when the disputed claims were located in order that the statutory deadline for filing copies of the notices of location with BLM can be determined with certainty. The claims were first mentioned on appellant's affidavit of assessment work filed on November 28, 1983. They were again listed on the affidavit of assessment work filed on December 13, 1984. Appellant listed his claims on his 1984 Assessment Reminder Form 3830-2, with a notation above the disputed claims: "add the following claims to complete and correct this list." Because Trust One through Trust Six, were all located on or before August 19, 1981, it appears highly likely that Trust Seven through Trust Ten and the Sand Hill claims were located sometime between August 19, 1981, and November 28, 1983. Thus, these claims were subject to the recording requirements of 43 CFR 3833.1-2(a).

The applicable regulation 3833.1-2(a) provides very specific requirements for the recordation of mining claims. In particular, the regulation requires that the owner

[S]hall file within 90 days after the date of location of that claim or site in the proper BLM office, a copy of the official record of the notice or certificate of location of that claim or site that was or will be filed under state law. If state law does not require the recordation of a notice or certificate of location of a claim or site, a notice or certificate of location containing the information in paragraph (b) of this section shall be filed.

Appellant indicated that the "original recordings of the claims" were enclosed with his statement of reasons. Only appellant's 1983 and 1984 affidavits of assessment work were enclosed with his statement of reasons. The mere listing of additional claims on an affidavit of assessment work clearly does not comply with the notice requirements of section 3833.1-2. Appellant has offered no other evidence showing that he complied with the regulatory requirements. BLM has specifically stated that, as of its February 1985 decision in this case, it had received no notices of location for the Trust Seven through Trust Ten and Sand Hill claims. Furthermore, the "OR MC" numbers appellant lists for the claims are not numbers assigned by BLM.

Based on these facts, we conclude that BLM properly declared the Trust Seven through Trust Ten and Sand Hill claims abandoned and void, in accordance with 43 CFR 3833.4. See Anthony J. Perchetti, 89 IBLA 320 (1985); Florian L. Glineski, 87 IBLA 266 (1985). Moreover, we conclude that BLM properly rejected the 1983 and 1984 affidavits of assessment work for recordation because the claims were not recorded timely with BLM and were, thus, void. 2/ See David D. Beal, 90 IBLA 91 (1985).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Kathryn A. Lynn John H. Kelly
Administrative Judge
Alternate member

Administrative Judge

2/ We cannot say that, had the claims been originally recorded timely with BLM, the 1983 and 1984 affidavits of assessment work would be subject to rejection because the serial numbers given were not BLM serial numbers. The fact that the affidavits referred to the names of the claims and that an attached map indicated the location of the claims in each case was sufficient, even though the serial numbers were erroneous. Arley Taylor, 90 IBLA 313 (1986); Philip Brandl, 54 IBLA 343 (1981).